SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-003765-23

STATE OF NEW JERSEY,	:	CRIMINAL ACTION
Plaintiff-Respondent,	:	On Appeal from a Judgment of Conviction of the Superior Court
v.	:	of New Jersey, Law Division, Camden County.
AFI N. ROY A/K/A AFI ROY	:	Indictment No. 23-03-00867-I
Defendant-Appellant.	:	Sat Below:
	:	Hon. Michael E. Joyce, J.S.C.

REDACTED BRIEF ON BEHALF OF DEFENDANT-APPELLANT

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Dated: November 27, 2024

DEFENDANT IS NOT CONFINED

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PRELIMINARY STATEMENT

The police in this case failed to abide by the rules surrounding the search of a home – one of the most valued and constitutionally protected areas. Police may not conduct a warrantless search of a home without an objectively reasonable basis to believe that there is an emergency inside that requires immediate aid. Here, the police entered defendant Afi N. Roy's home without a warrant based only on a report that a relative was worried about animals inside. But the animals had only been left unattended for, at most, a little over a day. The police's search, without any justifiable exception to the warrant requirement, plainly violated Roy's constitutional rights.

Consequently, the second search of Roy's home conducted pursuant to a search warrant equally violated Roy's constitutional rights because the State failed to prove that (1) police would have sought the search warrant without the prior unlawful search and (2) the initial entry of the home was devoid of flagrant police misconduct. The unlawful conduct clearly cannot be disentangled from the arguably lawful conduct that followed. Thus, the evidence seized from both searches must be suppressed in order to uphold the constitutional guarantee that citizens are free from unreasonable searches and seizures.

This Court should reverse the trial court's denial of the motion to suppress and remand to provide Ms. Roy with an opportunity to withdraw her plea if she chooses to do so.

PROCEDURAL HISTORY

Camden County Indictment Number 23-03-00867, issued on March 21, 2023, charged defendant-appellant Afi N. Roy with second-degree aggravated assault, contrary to N.J.S.A. 2C:12-1b(1) (Count One); second-degree possession of a weapon for unlawful purpose, contrary to N.J.S.A. 2C:39-4a(1) (Count Two); second-degree unlawful possession of a firearm, contrary to N.J.S.A. 2C:39-5b(1) (Count Three); and fourth-degree criminal mischief, contrary to N.J.S.A. 2C:17-3a(1) (Count Four). (Da 1-5)[1]

Roy filed a motion to suppress physical evidence seized from her home. (Da 6) On October 31, 2023, a suppression hearing was held before the Honorable Michael E. Joyce, J.S.C. (1T) The court orally granted the motion in part on the record and issued a corresponding order. (1T 66-7 to 22; Da 7) A return on the suppression hearing was held before Judge Joyce on January 25, 2024, to resolve the remaining issues presented. (2T) The court orally denied the remainder of the motion, and a corresponding order was issued on January 25, 2024. (2T 21-19 to 22; Da 8)

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[1] Da – Defendant's appendix
Dca – Defendant's confidential appendix
1T – October 31, 2023 – Suppression hearing
2T – January 25, 2024 – Suppression hearing
3T – March 18, 2024 – Plea
4T – March 26, 2024 – Sentence
PSR – Presentence Report

On March 18, 2024, Roy entered a guilty plea to an amended charge of third-degree aggravated assault, contrary to N.J.S.A. 2C:12-1b(7) (Amended Count One). (3T 19-19 to 24; Da 15-16) In exchange, the prosecutor agreed to dismiss the remaining charges and recommend a sentence of time served conditioned on five years of non-custodial probation, payment of mandatory fines and penalties, DNA testing, no-contact with the victim, forfeiture of firearms seized by law enforcement, and compliance with a mental health evaluation and treatment. (Da 9-14; 3T 3-16 to 4-7; 4T 5-1 to 16)

On March 6, 2024, Judge Joyce sentenced Roy in accordance with the plea agreement. (4T 12-6 to 13-10; Da 16-19) Judge Joyce dismissed the remaining charges. (4T 13-12 to 14; Da 19)

On August 1, 2024, Roy filed a notice of appeal, as within time. (Da 20-23)

STATEMENT OF FACTS

On January 24, 2023, Officer Mark Peiffer of the Berlin Borough Police Department was on patrol when he responded to a morning call at Roy's home. (1T 4-9 to 16, 6-10 to 7-4) Peiffer testified that the call "was in relation to animal welfare" and that a relative, later identified as Roy's mother, was "worried" about animals in the home who allegedly "had been in the house for several days with no one to care for them." (1T 6-21 to 7-4, 47-4 to 6) Peiffer was admittedly familiar with the home and Roy as one of the home's occupants because Peiffer was involved in Roy's arrest the day prior on January 23, 2023, as a SWAT officer at the same address. (1T 7-16 to 21, 19-24 to 20-25) Roy was arrested at approximately 1:30 a.m. at her home on January 23 and remained in custody on January 24. (1T 46-8 to 12, 46-24 to 47-4)

When Peiffer arrived at the home with other officers, Roy's mother was outside and explained that "there was a dog and at least two cats" in the home. (1T 8-20 to 9-5) Roy's mother denied having access to the home so Peiffer walked around until he found an open window that provided a means of entry. (1T 9-3 to 12) Footage from Peiffer's body camera was shown at the suppression hearing. (1T 12-2 to 13-10, Da 24)[2] The footage shows Peiffer

[2] At the hearing parts of Peiffer's body worn camera footage was fast-forwarded, but time stamps were not provided on the record. (1T 12-19 to 17-16) Based on the court's and the State's questioning while the video was

speaking to other officers by the open window and describing the interior of the home, prior to their entry. (1T 15-24 to 16-2, Da 24 10:50-11:00) Peiffer testified that he was familiar with the interior because when he was involved with Roy's arrest, they cleared "the interior of the home as part of SWAT protocol." (1T 16-3 to 7)

Subsequently, without anyone from the Animal Control Department present, Peiffer and a fellow officer entered the home without a warrant to "locate" the animals Roy's mother described – Peiffer testified that he entered the home in a "community caretaking" function. (1T 8-11 to 12, 9-20 to 10-11)

Inside the home, Peiffer located a dog and then went to search for the cats. (1T 8-11 to 16) Peiffer searched a bedroom of the residence and pulled back the headboard in the bedroom – he discovered a long gun case behind the headboard, with a cat underneath it. (1T 8-13 to 16) [redacted] The cat was confined to the bedroom until Animal Control arrived, and then was eventually removed from the home. (1T 11-5 to 6, 50-6 to 7)

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played, the following are the approximate time stamps of what was shown during the hearing: 0:00-6:04, 10:50-20:00.

[3] Though the body worn camera footage shows Peiffer discovering the case closed, it is unclear from the trial court record when police opened the gun case to reveal the shotgun inside. (1T 8-11 to 19, Da 24 17:35-18:00)

Animal Control was then finally called to the scene. (1T 9-25 to 10-17) Once present, Peiffer brought Animal Control inside the residence. (1T 10-14 to 15) Animal Control first removed the dog from the home. (1T 10-14 to 17, 11-5 to 9) Then the officers and Animal Control went to address a second cat in the home's basement, where they also discovered turtles in a tank. (1T 10-18 to 20) Peiffer testified that Animal Control then "was looking for supplies for the turtle, such as food or something to contain them in" and in doing so opened a drawer and found two pistols. (1T 10-18 to 25) The officers later determined them to be starter pistols. (1T 10-20 to 25)

Peiffer testified that after securing the pistols and the animals, he and everyone else exited the home, while his sergeant and lieutenant spoke to the Prosecutor's Office regarding a search warrant. (1T 11-3 to 12) Peiffer and other officers remained on the scene while an application for the search warrant was made. (1T 11-10 to 12, 18-21 to 19-2) [redacted]

[redacted] Ultimately the legally registered firearm was discovered in the home. (1T 21-20 to 25, 51-24 to 52-7)

After hearing and finding Peiffer's testimony credible, the court upheld the entry into the home under the emergency-aid doctrine and did not suppress the shotgun discovered. (1T 63-1 to 21, 2T 18-3 to 24) But the court ruled that opening the cabinet drawer in search of turtle food was beyond the scope of the emergency-aid search and thus suppressed the two starter pistols found in the drawer. (1T 66-7 to 13) Following briefing regarding the subsequent warranted search, the court concluded that the independent source doctrine applied. (2T 18-21 to 21-22) Specifically, the court determined that even without reference to the starter pistols, the warrant established probable cause to search the home, the police would have applied for a warrant regardless of discovering the pistols, and there was no flagrant police misconduct. (2T 18-21 to 21-22)

LEGAL ARGUMENT

POINT I

THE WARRANTLESS ENTRY INTO THE HOME WAS UNLAWFUL BECAUSE ANIMAL WELFARE DOES NOT QUALIFY AS AN EMERGENCY UNDER THE EMERGENCY-AID EXCEPTION. EVEN IF IT DID, POLICE LACKED AN OBJECTIVELY REASONABLE BASIS TO BELIEVE THAT AN EMERGENCY EXISTED THAT REQUIRED POLICE TO PROVIDE IMMEDIATE ASSISTANCE TO THE ANIMALS. (1T 63-1 to 66-13)

The police here entered Roy's home without a warrant based on nothing more than a vague concern that animals inside might need care. New Jersey caselaw has not endorsed that the concern for animal welfare can serve as "an objectively reasonable basis" that an emergency exists to justify a warrantless entry into the home. Accordingly, all the physical evidence found through the warrantless entry of Roy's home must be suppressed.

Both the United States and New Jersey Constitutions protect citizens from unreasonable searches and seizures. U.S. Const. amends. IV, XIV; N.J. Const. art. 1, para 7. Federal and state courts have enforced "a more stringent standard . . . to searches of a residential dwelling" because "the sanctity of one's home is among our most cherished rights." State v. Edmonds, 211 N.J. 117, 129 (2012) (first quoting State v. Bruzzese, 94 N.J. 210, 217 (1983); then quoting State v. Frankel, 179 N.J. 586, 611 (2004)). The New Jersey Supreme

Court recently emphasized that a "warrantless search of a home is 'presumptively unreasonable' and 'must be subjected to particularly careful scrutiny.'" State v. Radel, 249 N.J. 469, 494 (2022) (quoting Edmonds, 211 N.J. at 129). To overcome this critical presumption, the State bears the burden of proving that a warrantless search of a home is justified by "one of the few 'well-delineated exceptions to the warrant requirement.'" State v. Vargas, 213 N.J. 301, 314 (2013) (quoting Frankel, 179 N.J. at 598).

One of those exceptions is the emergency-aid exception which provides that a police officer may conduct a warrantless entry into the home if the officer has "an objectively reasonable basis to believe that an emergency requires that he provide immediate assistance to protect or preserve life, or to prevent serious injury." Id. at 323 (quoting Edmonds, 211 N.J. at 132). There also must be a "reasonable nexus between the emergency and the area or places to be searched." Ibid. (quoting Edmonds, 211 N.J. at 132).

Here, the State failed to justify the initial warrantless entry into Roy's home. The police relied on concern for animal welfare to serve as the basis for invoking the emergency-aid exception to the warrant requirement, but such reliance is not currently supported by New Jersey's constitutional jurisprudence on the doctrine post-Vargas. Furthermore, any reliance on N.J.S.A. 4:22-17.7(b) is misplaced because "all statutes must conform to" the

"fundamental constitutional principle" that police must "secure a warrant based on probable cause . . . unless exigent circumstances justify suspending the warrant requirement." State v. Hemenway, 239 N.J. 111, 116 (2019). Alternatively, even if aid to animals can serve as the basis for the emergency-aid exception, here, there was virtually no evidence to support that there was an "objectively reasonable emergency" that required "immediate" assistance to the animals inside Roy's home. Vargas, 213 N.J. at 305, 323.

Therefore, because the initial warrantless entry into Roy's home was unlawful, the shotgun seized during the course of the search must be suppressed in addition to the pistols.

A. An Animal-Related Emergency Does Not Serve As A Valid Basis For The Invocation Of The Emergency-Aid Exception To Justify A Warrantless Search Of A Home.

Vargas is our Supreme Court's seminal decision on the interrelationship between the community-caretaking and emergency-aid doctrines as applied to the home. In Vargas, the Court focused on human-related emergencies and did not extend the emergency-aid exception to animals. 213 N.J. at 305. Any contemplation on broadening the application of the emergency-aid doctrine must be rejected given New Jersey's consistent emphasis on its citizens' rights to be free from governmental intrusion in the home. See Hemenway, 239 N.J. at 125 (explaining that both the Federal and State Constitutions protect "the

right of the people to be safe within the walls of their homes, free from governmental intrusion"). The New Jersey Supreme Court recently emphasized that "[o]ne of the most valued of all constitutional rights is the right to be free from unreasonable searches of one's home." Radel, 249 N.J. at 476 (emphases added); see also Hemenway, 239 N.J. at 126 ("physical entry of the home is the chief evil against which the wording of the Fourth Amendment is directed" (quoting United States v. U.S. Dist. Ct., 407 U.S. 297, 313 (1972))); State v. Wright, 221 N.J. 456, 460 (2015) ("The United States Supreme Court and this Court have repeatedly emphasized that a person's home is entitled to the highest form of protection against warrantless searches.").

Our Supreme Court has kept this important principle in mind when setting the bounds of the community-caretaking doctrine as applied to people's homes. In Vargas, the Court limited the community-caretaking doctrine and held that community caretaking alone is "not a basis for the warrantless entry into and search of a home"; instead, consent or a form of exigent circumstance must be present. 213 N.J. at 321. And when engaging in "community-caretaking tasks . . . police officers must still comply with the dictates of the Fourth Amendment and Article, I, Paragraph 7 of our State Constitution." Id. at 323 (emphasis added). The Court then clarified that, though the community-caretaking doctrine is not a stand-alone exception to the warrant requirement

for the search of a home, police when engaging in a community-caretaking role, may "make a warrantless entry into a home under the emergency-aid exception." Ibid.

When entering a home under the guise of the emergency-aid exception, police officers must possess an "objectively reasonable basis to believe that an emergency" requires the officers' "immediate assistance to protect or preserve life, or to prevent serious injury." Id. at 323-24. The emergency must be "so compelling." Id. at 325. For instance, a warrant would not be required "to break down a door to enter a burning home to rescue occupants or extinguish a fire, to prevent a shooting or to bring emergency aid to an injured person." State v. Hathaway, 222 N.J. 453, 469 (2015) (quoting Frankel, 179 N.J. at 600).

Notably, Vargas and New Jersey jurisprudence as a whole has focused on emergency situations involving threats to human life to serve as the basis for the emergency-aid exception. In Vargas, a landlord was concerned about a tenant whom he had not seen for two weeks – but even though human life was involved, the Court still found that an emergency did not exist, as will be discussed further in Subsection C. 213 N.J. at 327-28. Comparatively, in State v. Fede, the New Jersey Supreme Court determined that reports of domestic violence may justify the warrantless entry into a home under the emergency-

aid doctrine. 237 N.J. 138, 146-47 (2019). Similarly, reports that children have been left unattended also may justify a warrantless search. State v. Garland, 270 N.J. Super. 31, 44-45 (App. Div. 1994). But, in State v. Reece, the Court maintained that under circumstances where there is "a dropped 9-1-1 call" and a presumed emergency as a result, courts must still "weigh the competing values at stake, the privacy interests of the home versus the interest in acting promptly to render potentially life-saving assistance to a person who may be incapacitated." 222 N.J. 154, 169 (2015) (emphases added).

Consistently, New Jersey courts have enumerated examples of life-saving emergencies related to humans, not animals. This is likely so because of the heightened interests in the privacy of one's home and the need for the emergency to be compelling enough to overcome those interests. Emergencies related to animals do not overcome this imperative constitutional protection. Though, as the trial court here noted, other jurisdictions[4] have concluded that animal-related emergencies may qualify under this exception, "[h]istorically, the State Constitution has offered greater protection to New Jersey residents than the Fourth Amendment." State v. Earls, 214 N.J. 564, 568 (2013). Thus, New Jersey's emergency-aid doctrine does not permit police to violate the sanctity of someone's home simply to check on animals. The police in this case

[4] These cases are discussed in more detail in Subsection C.

were not allowed to enter Roy's home because there was no human life at stake and thus the shotgun discovered must be suppressed.

B. Any Reliance On N.J.S.A. 4:22-17.7 To Conclude Animal-Related Emergencies Qualify Under The Emergency-Aid Exception To The Warrant Requirement Is Misplaced.

The trial court improperly relied on N.J.S.A. 4:22-17.7(b) to support its decision that the initial entry into Roy's home was lawful under the emergency-aid doctrine. (1T 61-12 to 63:21) N.J.S.A. 4:22-17.7(b) in pertinent part provides that

> State or local law enforcement officer[s] may immediately enter onto private property where a dog, domestic companion animal, or service animal is located and take custody of the animal if the officer has a reasonable basis to believe that, due to a violation of [N.J.S.A. 4:22-17.1 et seq.], immediate assistance is required to protect or preserve the animal's life or prevent injury to the animal.
>
> [(emphasis added).]

Our Supreme Court recently held in Hemenway that "[a]ll statutes must conform to [the] fundamental constitutional principle" that under both the Federal and State Constitutions police must "secure a warrant based on probable cause before entering and searching a home" unless an exception applies. 239 N.J. at 116, 127. Thus, in Hemenway, the Court conformed the Prevention of Domestic Violence Act to constitutional norms and required that a warrant to search for weapons under the Act must generally be premised on

probable cause, rather than just "reasonable cause" as originally provided in the Act. Id. at 117, 130. The Supreme Court highlighted that even though "[c]ombatting domestic violence is an important societal and legislative goal," the Act must still abide by "well-established constitutional norms." Ibid.

Here, N.J.S.A. 4:22-17.7(b) says that law enforcement can enter a home on less than probable cause for the purpose of rendering aid to animals. N.J.S.A. 4:22-17.7(b) only requires that law enforcement have a "reasonable basis to believe" that there is an imminent risk to an animal's life to enter private property. In essence, the statute purports to expand the emergency-aid exception to animal emergencies. However, the Legislature cannot lessen the constitutional protections to which a home is entitled by expanding an exception to the warrant requirement beyond what the constitution allows. Hemenway, 239 N.J. at 127 ("An overarching principle governs our constitutional jurisprudence: entry into the home must be premised on a search warrant issued on probable cause or on an exception to the warrant requirement."). As discussed in Subsection A, our emergency-aid caselaw post-Vargas has only contemplated and permitted police to enter a home when human life is at stake, not animals. See, e.g., Fede, 237 N.J. at 146-47 (warrantless entry into a home permissible after reports of domestic violence); State v. Mordente, 444 N.J. Super. 393, 398-99 (App. Div. 2016) (warrantless

entry into a home permissible after report that the defendant's mother with dementia was missing from the home). Thus, the trial court erred in relying on this statute as a basis for asserting that the initial entry of Roy's home was lawful because the statute as presently written, does not conform with current New Jersey constitutional norms. The emergency-aid exception does not apply to animals, and this statute cannot lessen the constitutional requirements to enter a home without a warrant.

Though maintaining animal welfare may be considered an important societal goal, like combatting domestic violence, statutes must still conform with the State Constitution. Because N.J.S.A. 4:22-17.7(b) does not do this, the trial court impermissibly relied upon it when determining that the initial entry into Roy's home was lawful. Alternatively, as outlined in Subsection C, the police did not even meet the standard provided in N.J.S.A. 4:22-17.7(b). Specifically, there was virtually no evidence presented that the officers possessed a "reasonable basis to believe" that because of a violation of L. 2017, c. 189,[5] the animals in Roy's home required immediate assistance. Thus, any reliance on N.J.S.A. 4:22-17.7 to support the police's actions is misplaced.

[5] Violations include subjecting animals to "adverse environmental conditions," cruel restraint, and unlawful confinement. N.J.S.A. 4:22-17.2-17.4.

C. Even If Animal-Related Emergencies Qualify Under The Emergency-Aid Exception, There Is No Support In The Record That The Police Had An "Objectively Reasonable Basis" To Believe There Was A True Emergency That Justified Warrantless Entry Into The Home.

Alternatively, even if the emergency-aid exception can be premised on an animal-related emergency, the record here does not establish that the officers involved in the initial entry of Roy's home had an "objectively reasonable basis" to believe that an emergency existed that required immediate assistance. Vargas, 213 N.J. at 326. As previously stated, to justify a warrantless search under the emergency-aid exception, the State must satisfy a two-pronged test: (1) law enforcement must have an "objectively reasonable basis to believe that an emergency requires that he provide immediate assistance to protect or preserve life, or to prevent serious injury"; and (2) the areas searched must be reasonably related to the emergency. Id. at 323-24 (quoting Edmonds, 211 N.J. at 132).

Here, the State fails to establish the first prong of this test. The only testimony elicited regarding the warrantless search of Roy's home was from Officer Peiffer. Peiffer testified that law enforcement was called to Roy's home because a relative reported that she "was worried about animals that had been in the house for several days with no one to care for them." (1T 6-21 to 7-4) (emphasis added). No further description of the relative's concern was

provided at the suppression hearing. Further, the allegation that the animals were in the house "for several days" alone is contradicted by Peiffer's later testimony and the trial court's factual findings, in which it is revealed that Peiffer was involved with Roy's arrest 33 hours prior at the same home, and thus Roy was only absent from the home for that period of time. (1T 19-24 to 20-25, 46-8 to 23, 62-17 to 20)

A generalized concern and an undisputed fact that, at most, the animals were alone for about one day is a far cry from the actual emergencies typical in emergency-aid cases in New Jersey. In Hathaway, the Supreme Court held that the emergency-aid exception was properly invoked when police entered a hotel room without a warrant after a victim reported to hotel security that he was robbed at gunpoint and security footage showed the victim leaving a hotel room "quickly in what appeared to be a panic." 222 N.J. at 460-62. The Court determined that the officers were faced with "a high-risk, public-safety danger: the prospect of a gunman on the premises" which justified the warrantless entry into the hotel room. Id. at 477. In Mordente, the Appellate Division determined that the emergency-aid exception justified a warrantless search of a home's basement, after the defendant reported that his mother, who had dementia, was missing for an entire night from the home. 444 N.J. Super. at 395, 398-99.

Comparatively, in Vargas, the Court found that the emergency-aid exception did not justify the warrantless entry into the defendant's apartment after the landlord reported to the police that the defendant "had not been seen for two weeks[,] . . . had not picked up his mail, moved his car, or paid his rent and utility bills." 213 N.J. at 327-28. The Court highlighted in its decision that the landlord did not attempt to contact the defendant's emergency contact to ascertain the defendant's whereabouts and did not know details of the defendant's schedule and habits. Id. at 327. Because the landlord had limited knowledge of the defendant's personal behaviors, and thus could not opine that the defendant's absence was abnormal or emergent, the Court emphasized that the circumstances were clearly different than "a close family member whose housebound elderly relative is not responding to telephone calls" or an "infirm neighbor who is not seen carrying out routine daily activities." Ibid.

Moreover, in jurisdictions that have accepted animal-related emergencies as a basis for warrantless searches, the imminence of harm to the animals is much more apparent. The Supreme Court of Rhode Island held that officers' warrantless "cursory search" of the exterior of a defendant's property was justified under the "emergency doctrine" because prior to the search: (1) the defendant's neighbors called 9-1-1 to report that the defendant was shooting his dog; (2) officers questioned the defendant who admitted to having a lot of

dogs and firearms; and (3) officers questioned the neighbors who reported the incident and who stated that the defendant threatened to kill his dog in front of them and subsequently they heard a gunshot. State v. Goulet, 21 A.3d 302, 312-14 (R.I. 2011).

In Massachusetts, where the facts presented to the Supreme Judicial Court included a report from a neighbor that two dogs were dead and one was emaciated on the defendant's property, the court determined that the emergency-aid exception extends to emergencies involving animals, but that "additional considerations" must be taken into account including whether humans caused the animals harm, the nature of the privacy interest at issue, and whether there were efforts made to obtain consent from a property owner. Commonwealth v. Duncan, 7 N.E. 469, 475-76 (Mass. 2014).

In contrast, here, the only information police relied upon was Roy's mother who expressed generalized worry for the animals in Roy's home. (1T 6-21 to 7-4) Further, as revealed on cross-examination, Peiffer knew that Roy was absent from the home for only a little over a day, thus the animals could not have been alone for more than that period of time. (1T 19-24 to 20-15) Notably, the State presented no evidence at the hearing that the police had made any effort to ascertain from anyone else besides Roy's mother whether someone had accessed Roy's home and checked on the animals from the time

of Roy's arrest to when the officers arrived on the scene. Based on the record before the trial court, the State did not meet its burden because it failed to demonstrate that the officers had an objectively reasonable basis to believe an emergency involving the animals existed that required immediate assistance.

Because police did not observe any evidence suggesting there was a true emergency, their warrantless entry into Roy's home was unlawful. Accordingly, the shotgun seized during the initial warrantless search of the home must be suppressed. This Court should reverse the partial denial of the motion to suppress and remand to give Roy the opportunity to withdraw her guilty plea if she chooses to do so.

POINT II

THE FRUITS OF THE SECOND SEARCH MUST BE SUPPRESSED BECAUSE THE STATE FAILED TO PROVE THAT THE POLICE WOULD HAVE SOUGHT A SEARCH WARRANT WITHOUT THE KNOWLEDGE OF THE TAINTED EVIDENCE AND THAT POLICE DID NOT ENGAGE IN FLAGRANT POLICE MISCONDUCT. (2T 15-12 to 21-22)

The independent source doctrine cannot save the fruits of the second search of Roy's home because the initial illegal search cannot be disentangled from the subsequent search conducted pursuant to a warrant. First, the independent source doctrine cannot be invoked because the State failed to prove by clear and convincing evidence that police would have sought a search warrant regardless of the first, illegal search. This is so even if this Court affirms the trial court's decision denying suppression of the shotgun – the illegal discovery of the pistols is what ultimately led police to apply for a search warrant. Second, if this Court agrees that the entire, warrantless entry into Roy's home was illegal, then the State cannot prove by clear and convincing evidence that the illegal search was devoid of flagrant police misconduct. Thus, the items seized during the search pursuant to the warrant must also be suppressed.

Generally, when police conduct an unlawful search, the fruits of that search must be suppressed. State v. Holland, 176 N.J. 344, 353 (2003). The

purpose of this rule is "to compel respect for the constitutional guarantee in the only effective way – by removing the incentive to disregard it." Ibid. (quoting United States v. Calandra, 414 U.S. 338, 347 (1974)). A narrow exception to that rule is the independent source doctrine. Id. at 354. The independent source doctrine "allows for the introduction of evidence tainted by unlawful police conduct if the information leading to discovery of the evidence is independent of the previous unlawful conduct." State v. Camey, 239 N.J. 282, 310 (2019). In other words, the independent source doctrine allows the admission of evidence found independent of or unrelated to any constitutional violation. Holland, 176 N.J. at 348. The doctrine may be invoked when police conduct two separate searches – an initial, unlawful search, followed by an arguably lawful one. Notably, however, a search that "involves an illegal entry into one's dwelling" is a fact that "is relevant to the analysis" because of an individual's rigorous privacy interests in the home. Id. at 365.

The New Jersey Supreme Court in Holland formulated a three-prong test for the independent source doctrine. The State has the burden of proving by clear and convincing evidence all three of the following prongs: (1) "probable cause existed to conduct the challenged search without the unlawfully obtained information"; (2) "police would have sought a warrant without the tainted knowledge or evidence that they previously had acquired or viewed"; and (3)

"the initial impermissible search was not the product of flagrant police conduct." 176 N.J. at 360-61, 365. Here, the State has failed to prove by clear and convincing evidence that all three prongs have been met, thus the independent source doctrine cannot be invoked, and the fruits of the warranted search must be suppressed.

A. The State Failed To Prove By Clear and Convincing Evidence That The Police Would Have Sought A Warrant Independent of The Evidence Discovered During The Warrantless Search, Regardless Of Whether The Initial Entry Into The Home Is Deemed Unlawful.

The State failed to establish by clear and convincing evidence prong two – that police would have sought a search warrant for Roy's home without the tainted evidence discovered during the first, illegal search, regardless of whether this Court agrees that the shotgun should have been suppressed along with the pistols. The police here only applied for a search warrant after the illegal search by Animal Control that led to the discovery of the pistols. Thus, because the application for a search warrant was directly linked to the illegal search, the State failed to prove that the independent source doctrine applied.

The circumstances in Holland are illuminating when considering whether the State here satisfied its burden in proving this prong. In Holland, officers approached a home because they detected a strong odor of marijuana. 176 N.J. at 349. After announcing themselves at the door, an occupant of the

home ran out the back door and dropped what appeared to be a "bud" of marijuana – the officers then entered the home without a warrant and observed in their plain view what appeared to be marijuana, drug paraphernalia, and a firearm. Id. at 349-50. Subsequently, the officers applied for a search warrant. Id. at 351.

The Court in Holland determined that the State failed to prove that the officers would have sought a search warrant "regardless of their improper initial search" because key evidence illustrated that the search warrant was only sought after the warrantless search of the home that uncovered the incriminating evidence. Id. at 363-64. Specifically, the Court noted statements from a patrolman who indicated that there were discussions of seeking a warrant because of what was discovered during the illegal initial search. Id. at 364. The Court also found that even though the warrant application included "the few facts that the officers observed prior to their illegal entry, the detective's warrant application is saturated with references to the knowledge and items acquired . . . inside [the] defendant's home." Ibid. The Court determined that these facts fractured the State's ability to meet its clear and convincing burden of proof for the second prong of the independent source analysis because, in essence, the facts revealed that the illegal search prompted the police to obtain a search warrant. See id. at 364. And thus, acquiring the

search warrant was not wholly independent from what was illegally discovered. Ibid.

Here, though the trial court found the initial entry into the home lawful (and thus did not suppress the shotgun discovered), the trial court determined that the pistols found must be suppressed. But, similarly to Holland, Peiffer testified during the motion hearing that after the initial search was conducted and the pistols were located, Peiffer and fellow officers exited Roy's home and remained outside while the lieutenant and sergeant were attempting to secure a search warrant. (1T 11-1 to 12) No evidence was presented to establish that police considered obtaining a search warrant either prior to the initial search or prior to the discovery of the pistols, indicating that the illegal discovery of the pistols prompted the application for the search warrant. Notably, Peiffer testified to two separate warrantless entries into Roy's home – one with only police, where police found the shotgun, and one with Animal Control, where Animal Control discovered the pistols. (1T 9-13 to 10-25) Again, no evidence was presented that a search warrant was contemplated between the searches with and without Animal Control – it was only after Animal Control arrived on scene and discovered the pistols that were ultimately suppressed that Peiffer indicated that his lieutenant and sergeant were discussing a search warrant with the Prosecutor's Office. (1T 11-1 to 12)

Thus, even if the Court agrees with the trial court that the shotgun did not need to be suppressed, Peiffer's testimony still completely fractures the State's ability to prove by clear and convincing evidence that the application for the search warrant was wholly independent of the discovery of the suppressed pistols. This is so because the record supports the conclusion that the search warrant was only contemplated after the pistols were discovered, not at anytime before, thereby illustrating that police would not have sought a search warrant without the evidence illegally discovered.

Further, if the Court agrees that the initial search was unlawful, then there is even more evidence to show that the subsequent search pursuant to a warrant cannot be disentangled from the first, illegal search. [redacted]

[redacted]

Importantly, the State presented no evidence or testimony to explain why the police made no attempt to obtain a search warrant for the home during the 33 hours between Roy's arrest and the police's return to the home. If the "police would have sought a warrant without the tainted knowledge or evidence that they previously had acquired or viewed," Holland, 176 N.J. at 361, they would have gotten a warrant before they returned to the home. By failing to take any steps to secure a warrant in the 33 hours between Roy's arrest and their re-entry into the home, the police's own actions demonstrate that the search warrant was not independent from the illegal search and that they were not committed to investigating Roy's home prior to the discovery of the suppressed pistols or the first search as a whole. See State v. Chaney, 318 N.J. Super. 217, 226 (App. Div. 1999) (finding police would have sought a warrant to search a motel room because testimony presented clearly indicated police "decided to take whatever steps were necessary to search" the room prior to an initial, illegal search of the room).

Finally, Peiffer participated in both the warrantless and warranted searches of Roy's home. (1T 8-11 to 16, 11-18 to 22) This even further weakens the State's ability to prove by clear and convincing evidence that the

subsequent warranted search of Roy's home can be disentangled from the initial, unlawful search, or the discovery of the pistols, because "when the same officer participates in an improper search and in an arguably lawful one occurring only a short time later, the State's burden in demonstrating the validity of the second search will be most difficult." Holland, 176 at 363 (emphasis added). Thus, the State failed to prove by clear and convincing evidence that the officers would have sought a search warrant regardless of what was discovered during the initial, illegal search, and thus regardless of the Court's opinion of the other two prongs, the fruits of the warranted search must be suppressed.

B. The State Failed To Prove That The Initial, Illegal Entry Into The Home Was Not the Product Of Flagrant Police Misconduct.

If this Court agrees that the initial entry into Roy's home was unlawful, then the State also cannot prove by clear and convincing evidence that the warrantless entry was devoid of flagrant police misconduct. The Supreme Court established in Holland that the independent source doctrine cannot be invoked if an "impermissible search was . . . the product of flagrant police misconduct." 176 N.J. at 361. Evidence admitted despite a "flagrant violation of the Constitution" threatens "[t]he integrity of our court system." State v. Caronna, 469 N.J. Super. 462, 505 (App. Div. 2021). "Flagrancy" is a high bar and requires "active disregard of proper procedure, or overt attempts to

undermine constitutional protections." Camey, 238 N.J. at 310; see also State v. Shaw, 213 N.J. 398, 420-21 (2012) (noting that the flagrancy bar is not so high that only police engaging in physical abuse will trigger the finding of "flagrant conduct.").

In Chaney, the Appellate Division determined that illegal police conduct was not flagrant or deliberate because, based on the evidence presented, the police had "objectively reasonable grounds for believing that they were authorized" to enter a motel room to execute an arrest warrant that they later found out was not for the person occupying the motel room at the time of the illegal entry. 318 N.J. Super. at 226-27. The police's actions were not of the type that suppression of evidence discovered would "deter similar future violations of constitutional rights." Id. at 227.

Here, in contrast, the police engaged in an active disregard of proper procedure. [redacted]

Then, unlike the police in Chaney, the police here, as outlined in Point I, illegally entered Roy's home without any objectively reasonable basis. Despite

Peiffer attempting to justify the police's actions through the community-caretaking doctrine, (1T 9-20 to 24), Vargas is clear that police cannot enter a home in a community-caretaking capacity without consent or an emergency – and here, there was no emergency. 213 N.J. at 321. [redacted] Notably, if police wanted to enter Roy's home to truly provide care to the animals inside, they could have also sought a warrant under N.J.S.A. 4:22-17.7(a)[6], but again they did not. The police cannot use perfectly safe animals as an excuse to avoid constitutionally protected procedures.

Thus, the State failed to prove by clear and convincing evidence that the search warrant was not the product of flagrant police misconduct, and suppression of all evidence obtained from the warranted search is required to deter further constitutional violations.

[6] N.J.S.A. 4:22-17.7(a) provides that "Upon a showing of probable cause that there has been a violation of [N.J.S.A. 4:22-17.1 et seq.] and submission of proof of issuance of a summons, a court of competent jurisdiction may issue, upon request, a warrant to any . . . State or local law enforcement officer to enter onto the private property where a dog, domestic companion animal, or service animal is located and take custody of the animal."

POINT III

THE COURT ERRED IN ITS FINDING AND WEIGHING OF AGGRAVATING FACTORS 3 AND 6 AND FAILED TO MAKE A FINDING FOR MITIGATING FACTOR 7 DURING SENTENCING. (4T 10-1 to 12-9)

The trial court sentenced Roy to the maximum possible sentence available pursuant to her plea agreement – five years of probation. (4T 11-22 to 12-12) This matter should be remanded for resentencing because of the court's errors in its finding of aggravating and mitigating factors. Specifically, the court erred in its finding and weighing of aggravating factors 3 (likelihood of reoffending) and 6 (prior criminal record and seriousness of present offense). N.J.S.A. 2C:44-1(a)(3), (6). The trial court stated that it placed "great weight" on both aggravating factors 3 and 6 because "there's the prospect defendant may commit another crime, based upon prior history and this incident, and this is a serious offense." (4T 10-21 to 25) In its reasoning, the trial court only cited to "two family court convictions which resulted in the issuance of two final restraining orders" to support its finding of a "prior history" and did not provide any further explanation, despite Roy not having an adult criminal record. (4T 10-9 to 10, PSR 5-7) Thus the trial court improperly found and weighed aggravating factors 3 and 6 and a remand for

resentencing is required for the court to consider imposing a lesser term of probation.

When imposing a sentence, a court must consider the applicability of the aggravating and mitigating factors set forth in N.J.S.A. 2C:44-1. A court must "identify the aggravating and mitigating factors and balance them to arrive at a fair sentence." State v. Natale, 184 N.J. 458, 488 (2005). Simply enumerating the applicable aggravating and mitigating factors is insufficient. State v. Kruse, 105 N.J. 354, 363 (1987). A court must "state reasons for imposing such sentence, including . . . the factual basis supporting a finding of particular aggravating and mitigating factors affecting sentence." State v. Fuentes, 217 N.J. 57, 73 (2012). Thus, "[t]he finding of any factor must be supported by competent, credible evidence in the record." State v. Case, 220 N.J. 49, 64 (2014).

Aggravating factor 3 may "be based on assessment of a defendant beyond the mere fact of a prior conviction, or even in the absence of a criminal conviction," State v. Thomas, 188 N.J. 137, 154 (2006), but for first-time offenders, a court must give a "reasoned explanation for its conclusion" that a defendant "presented a risk to commit another offense." Case, 220 N.J. at 67. Here, the trial court did not provide a sufficient explanation to support a finding for aggravating factor 3. The trial court simply enumerated two family

court decisions that led to final restraining orders without any further reasoning. (4T 10-9 to 10) A remand for resentencing is required for the court to provide a reasoned explanation on the record regarding aggravating factor 3 because Roy did not have a prior criminal history, and thus should have been considered a "first-time offender" at sentencing. (PSR 5-7)

Further, it is unclear whether the trial court relied upon Roy's "prior history" to make a finding for aggravating factor 6 or only focused on the seriousness of the underlying offense to support this factor. (4T 10-21 to 25). Roy did not have a prior criminal record so any reliance on her "prior history" to support a finding of aggravating factor 6 is erroneous. (PSR 5-7) Because the trial court clearly did not state on the record the factual basis supporting its finding of aggravating factor 6, a remand for resentencing is required for this reason as well.

Relatedly, this case must be remanded for resentencing because the court failed to find mitigating factor 7, which was clearly present in the record. See Case, 220 N.J. at 64 (the court has an independent obligation to apply any mitigating factor that is "amply based in the record," regardless of whether defense counsel raises it). Mitigating factor 7 applies where the defendant "has no history of prior delinquency or criminal activity or has led a law-abiding life for a substantial period of time before the commission of the present

offense." N.J.S.A. 2C:44-1(b)(7). Importantly, prior dismissed charges may not be considered for any purpose, "when no such undisputed facts exist or findings are made." State v. K.S., 220 N.J. 190, 199 (2015).

Roy did not have any history of delinquency or criminal activity prior to the present offense. Her juvenile and municipal record only revealed dismissed offenses, (PSR 5-7), which cannot be considered for "any purpose." K.S., 220 N.J. at 199. And though Roy was involved in two family matters that resulted in final restraining orders, these matters were not before a criminal court and should not be considered "criminal activity." (PSR 5-7) Indeed, Roy has no prior criminal convictions. (PSR 5-7) Because the record amply supports that Roy, at the time of sentencing, had "no history of prior delinquency or criminal activity," the trial court should have made a finding for mitigating factor 7.

For these reasons, this Court should remand this case for resentencing.

CONCLUSION

For the reasons set forth in this brief, the evidence seized during the searches of Ms. Roy's home must be suppressed. Ms. Roy respectfully requests that the matter be remanded to the trial court to provide her with an opportunity to withdraw her plea if she chooses to do so. Alternatively, the matter should be remanded for resentencing.

Respectfully submitted,

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Dated: November 27, 2024

Superior Court of New Jersey

APPELLATE DIVISION
DOCKET NO. A-003765-23

STATE OF NEW JERSEY,	:	Criminal Action
Plaintiff-Respondent,	:	On Appeal from a Final Judgment of Conviction of the Superior Court of New Jersey, Law Division, Camden County.
v.	:	Sat Below:
AFI N. ROY A/K/A AFI ROY,	:	Hon. Michael E. Joyce, J.S.C.
Defendant-Appellant.	:	

BRIEF ON BEHALF OF THE STATE OF NEW JERSEY

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March 25, 2025

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PRELIMINARY STATEMENT

Due to defendant's arrest for aggravated assault and firearm offenses, her dog and two cats were left unattended in her home. Aware of this, but unable to enter the locked house to care for the animals, defendant's mother called police the next day. With no prospect of defendant returning home soon, and with nearly a day and a half having elapsed since defendant's arrest, the officers, after consulting the Camden County Prosecutor's Office, entered the home through an unlocked window.

Officers found the dog in a crate with no food, and one of the cats in a cat carrier, also with no food. The other cat was discovered behind a long-gun case, which contained a shotgun. The police called Animal Control to take custody of the animals. While searching for food for turtles that were inside a fish tank in the residence, the Animal Control officer discovered two starter pistols in a drawer beneath the tank.

After again consulting the Prosecutor's Office, the police withdrew from the home and applied for a search warrant to find the handgun that was registered to defendant and that was potentially implicated in the aggravated assault for which defendant had been arrested. The police obtained and executed the search warrant, which resulted in the recovery of the handgun from defendant's residence.

With no one to care for the dog and cats, which had already been left unattended and without food for 33 hours, and would remain unattended and without food indefinitely, exigent circumstances existed permitting the police to enter the home without a warrant to prevent further suffering by the animals. Moreover, the law expressly authorizes police to enter private property where there is a reasonable basis to believe that immediate assistance is necessary to prevent harm to animals. Because the purpose of such an entry is to ensure the welfare of the animals, and not to investigate the property owner, probable cause of a crime is not needed for the police to enter the property because they are not investigating a crime.

After ensuring the welfare of defendant's dog and cats, and having discovered the shotgun in the home while searching for the animals, the police properly obtained a warrant to search for the handgun with which defendant was believed to have committed the assault. The inadvertent discovery of the two starter pistols by the Animal Control officer did not motivate the police to obtain the search warrant, which was premised on the assault and was further supported by the discovery of the shotgun, which gave the police probable cause to believe that defendant's handgun was also inside the home.

Defendant pleaded guilty to aggravated assault not because the police unlawfully obtained evidence from her home, but because she is guilty and

because she avoided a prison sentence by receiving a five-year term of probation, a favorable resolution for a violent crime.

COUNTERSTATEMENT OF PROCEDURAL HISTORY

Defendant, Afi N. Roy, was charged in Camden County Indictment 0867-03-23 with second-degree aggravated assault, N.J.S.A. 2C:12-1(b)(1) (Count One); second-degree possession of a firearm for an unlawful purpose, N.J.S.A. 2C:39-4(a)(1) (Count Two); unlawful possession of a handgun, N.J.S.A. 2C:39-5(b)(1) (Count Three); and fourth-degree criminal mischief, N.J.S.A. 2C:17-3(a)(1). (Da1-5).[1]

Following the denial of defendant's motion to suppress evidence obtained as a result of the search warrant, defendant pleaded guilty to Count One, amended to third-degree aggravated assault, N.J.S.A. 2C:12-1(b)(7), in exchange for the State's recommendation of time-served conditioned on five years of probation, as well as surrender of her firearms and no contact with the victim. (Da8, Da9-15). The Honorable Michael E. Joyce, J.S.C., imposed the

[1] "Da" – defendant's appendix
"Dca" – defendant's confidential appendix
"PSR" – presentence report
"1T" – suppression motion, October 31, 2023
"2T" – suppression motion, January 25, 2024
"3T" – guilty plea, March 18, 2024
"4T" – sentencing, March 26, 2024

recommended sentence, assessed appropriate fines and penalties, and dismissed the remaining counts of the Indictment and the underlying complaint-warrant. Defendant had served 428 days in jail, from the date of her arrest on January 23, 2023, to March 25, 2024, the day before she was sentenced. (4T12-10 to 13-14; Da18).

COUNTERSTATEMENT OF FACTS

On the evening of January 22, 2023, Camden County Police responded to a residence in Camden for a report of a vehicle struck by gunfire. Officers spoke with Kyle Richardson, who stated that he had an argument with defendant, the mother of his girlfriend, who had come to the residence to deliver Christmas gifts. Due to defendant's behavior, Richardson asked her to leave. Soon after, Richardson departed the residence and entered his vehicle, whereupon he heard a gunshot. He looked over his shoulder and saw defendant standing outside her vehicle holding a gun. Richardson watched as defendant entered her vehicle, drove alongside his vehicle, and fired the gun a second time, striking the front passenger door of his vehicle. Defendant drove away before police arrived. (1T44-21 to 46-3).

The Camden County Prosecutor's Office approved charges against the defendant, who was arrested at approximately 1:30 a.m. on January 23, 2023, by a SWAT team at her home in Berlin, New Jersey, after she refused to come

out of the residence. (1T7-22 to 8-2; 1T46-8 to 23).

The next day, January 24, 2023, at 10:36 a.m., Berlin Police responded to defendant's home after receiving a call from defendant's mother, Josephine Roy, who reported that there were two cats and a dog left unattended in defendant's home, to which her mother did not have a key. (1T6-19 to 7-4; 1T46-24 to 47-13). After consulting the Prosecutor's Office, officers entered the home through an unlocked window to search for the animals and transfer them to the custody of Animal Control. (1T9-9 to 12; 1T47-14 to 20).

Officers found a dog in a kennel in the living room. The kennel contained a food bowl that was empty. (1T47-24 to 48-6). After checking the residence to ensure that no persons were inside, the officers entered a bedroom, the door to which had been closed during the initial check for persons. (1T48-8 to 49-7). Behind the headboard to the bed, beneath a long-gun case, police found a black cat, which they contained in the bedroom until Animal Control arrived. For their safety, the officers secured the long-gun case, which contained a 20-gauge shotgun and ten rounds of buckshot ammunition. (1T49-8 to 50-12). In the basement, officers found the second cat, which was in a litter box inside a cat kennel. (1T50-13 to 16).

Also in the basement was a fish tank that contained four turtles; the tank was on top of a bureau. When the Animal Control officer arrived, she opened a

drawer to the bureau to look for food for the turtles. She saw two pistols inside the drawer and notified the officers, who secured the pistols and rendered them safe. The pistols were later determined to be starter pistols (such as are used to signal the start of a race). (1T10-14 to 11-5; 1T50-17 to 51-18).

After the animals were removed from the home, the police contacted the Prosecutor's Office, which directed the officers to leave the residence and apply for a search warrant. (1T11-6 to 12; 1T51-19 to 23). The search warrant application described the aggravated assault against Richardson, defendant's arrest, and the subsequent entry of defendant's home by the police to remove the animals. The police sought to search the home for a Smith and Wesson Shield 9mm handgun that was registered to defendant and that was potentially implicated in the aggravated assault, which involved the use of a handgun. (Dca1-6). The search warrant was issued, and police discovered the Smith and Wesson handgun in a drawer in the back bedroom of the residence. The weapon contained one spent shell casing and a magazine with five rounds of ammunition.[2] (Dca7-8; 1T11-13 to 22; 1T51-24 to 52-7).

Defendant filed two motions to suppress evidence. In the first motion, defendant challenged the entry by the police to remove the animals, contending

[2] The police also found two other handguns, ammunition, and an additional magazine. (2T21-1 to 18).

that animal welfare does not constitute exigent circumstances justifying warrantless entry of a home by police. Defendant further argued that there was no evidence that the animals' lives were in danger. (1T25-12 to 26-3). The State countered that the animals had already been left unattended and unfed for 33 hours and would have starved without the intervention of the police, who entered the home for the limited purpose of removing the animals. (1T33-6 to 35-2).

Judge Joyce surveyed numerous state and federal cases holding that police may enter a home under the emergency-aid exception to the warrant requirement to protect the lives and safety of animals. (1T59-16 to 61-3). Similarly, Judge Joyce observed that New Jersey law expressly permits police to enter private property without a warrant where there is an objectively reasonable belief that immediate action is necessary to protect animals from injury or death. (1T61-12 to 21). Finding that defendant's dog and two cats had been unattended for 33 hours from the time police received the call from defendant's mother, and that defendant might not return soon due to her arrest, Judge Joyce ruled that the police lawfully entered defendant's home under the emergency-aid exception to the warrant requirement to care for the animals. (1T61-22 to 63-21). However, because the discovery of the starter pistols in the drawer when the Animal Control officer was looking for turtle food exceeded the purpose of the police in

entering the home, Judge Joyce suppressed the starter pistols. (1T63-22 to 66-22; Da7).

In her second motion to suppress, seeking the suppression of the evidence police obtained through the search warrant, defendant alleged that the police would not have sought the search warrant but for the discovery of the starter pistols. (2T4-16 to 6-4). The prosecutor responded that the police would have sought a search warrant irrespective of the discovery of the starter pistols because they had not found the handgun that was registered to defendant and that was potentially implicated in the assault. (2T6-7 to 20). Finding that the purpose of the search warrant was to recover the handgun, Judge Joyce ruled that the police would have sought the search warrant because the handgun might have been used to commit the assault, it had not been recovered, and the discovery of the shotgun in defendant's home supplied probable cause—independent of the starter pistols—to believe that the handgun was in the home. (2T18-21 to 19-24). Additionally, Judge Joyce concluded that the discovery of the starter pistols did not constitute flagrant misconduct by the police, who were alerted to the presence of the starter pistols by the Animal Control officer after she inadvertently found them while looking for food for the turtles. (2T19-25 to 20-25). Accordingly, the judge denied the motion to suppress. (2T21-19 to 22; Da8).

Thereafter, defendant entered into a negotiated plea agreement with the State, pleading guilty to Count One of the Indictment, as amended to third-degree aggravated assault, N.J.S.A. 2C:12-1(b)(7). In exchange, the State agreed to recommend a sentence of time-served conditioned on five years of probation, defendant's surrender of her firearms, and no contact with Kyle Richardson. (3T3-16 to 4-7; Da9-15). In her guilty-plea allocution, defendant admitted that she attempted to spray Richardson with mace. (3T11-12 to 13-25). Judge Joyce imposed the recommended sentence and dismissed the remaining counts of the Indictment and the underlying complaint-warrant.

This appeal follows.

LEGAL ARGUMENT

POINT I

THE EMERGENCY-AID EXCEPTION TO THE WARRANT REQUIREMENT APPLIES TO ANIMALS AND SUPPORTED THE ENTRY OF DEFENDANT'S HOME BY POLICE.

Defendant contends that New Jersey case law has not extended the emergency-aid exception to the warrant requirement to permit police to enter private property to ensure animal welfare, that New Jersey's animal-cruelty statute does not support the application of the emergency-aid exception to animals, and that there was no objectively reasonable emergency justifying the police entering her home without a warrant. Contrary to defendant's contention, New Jersey's animal-cruelty statute contemplates precisely what occurred in this case, where no crime had occurred with respect to defendant's dog and cats, but the police had an objectively reasonable basis to believe that immediate action was necessary to protect them from harm. There was no basis and no need for a search warrant for the police to render aid to these animals, which had been left unattended for nearly a day-and-a-half when police entered defendant's home and would otherwise have remained unattended indefinitely. Because the police had an objectively reasonable basis to believe that immediate action was necessary to protect the lives of these animals, officers lawfully entered defendant's home, where they inadvertently found the shotgun, which

Judge Joyce properly held was admissible as evidence at trial.

Appellate review of an order on a motion to suppress evidence is deferential to the motion court's factual findings, which the reviewing court will sustain if "supported by sufficient credible evidence in the record." State v. Evans, 235 N.J. 125, 133 (2018). Only if the motion court's findings are "clearly mistaken" will the appellate tribunal reverse. Ibid. Only the motion court's legal conclusions are subject to plenary review. Ibid.

Both the Fourth Amendment to the United States Constitution and Article I, Paragraph 7 of the New Jersey Constitution require police to obtain a warrant before conducting a search unless "a recognized exception to the warrant requirement applies." State v. Wright, 221 N.J. 456, 466 (2015). The State must establish the exception by a preponderance of the evidence. State v. Wilson, 478 N.J. Super. 564, 577 (App. Div. 2024). One of those exceptions is community caretaking, which acknowledges the "dual role" that police officers play to both investigate crime and to otherwise ensure the welfare of the communities they serve "such as [by] aiding those in danger of harm[.]" State v. Bogan, 200 N.J. 61, 73 (2009). The community caretaking exception is properly invoked when "police officers [] engage in . . . functions, totally divorced from the detection, investigation, or acquisition of evidence relating to the violation of a criminal statute." Id. at 73-74 (quoting Cady v. Dombrowski,

413 U.S. 433, 441 (1973)).

Where police seek to enter a home for a community caretaking purpose, there must be "an objectively reasonable emergency." State v. Vargas, 213 N.J. 301, 305 (2013). This entails the application of the emergency-aid doctrine, which recognizes that there are instances where police and other first responders do not have time to obtain a warrant "because of the immediate and urgent circumstances confronting them." State v. Hathaway, 222 N.J. 453, 468 (2015). In such an instance, a police officer's warrantless entry into a home will be upheld if "(1) the officer had an objectively reasonable basis to believe that an emergency requires that he provide immediate assistance to protect or preserve life, or to prevent serious injury and (2) there was a reasonable nexus between the emergency and the area or places to be searched." State v. Edmonds, 211 N.J. 117, 132 (2012) (citation and internal quotation marks omitted).

Whether such an emergency exists depends on "what was reasonable under the fast-breaking and potentially life-threatening circumstances that were faced at the time" the police acted. State v. Frankel, 179 N.J. 586, 599 (2004). "The emergency aid doctrine only requires that public safety officials possess an objectively reasonable basis to believe—not certitude—that there is a danger and need for prompt action." Ibid. The scope of the search is defined by the nature of the emergency. "A police officer entering a home looking for a person

injured or in danger may not expand the scope of the search by peering into drawers, cupboards, or wastepaper baskets." Ibid.

Defendant contends that these principles do not apply when animals are the object of the emergency, arguing that Vargas and caselaw generally in this area implicate only human life. Neither Vargas nor any other decision precludes application of the community-caretaking and emergency-aid doctrines to animals, and there is no reason why those exceptions would not apply.

Quite to the contrary, New Jersey's animal cruelty statutes contemplate the very situation confronting the officers in this case. N.J.S.A. 4:22-17.7 provides in pertinent part:

> a. Upon a showing of probable cause that there has been a violation of P.L.2017, c. 189 (C.4:22-17.1 et seq.) and submission of proof of issuance of a summons, a court of competent jurisdiction may issue, upon request, a warrant to any municipal humane law enforcement officer, humane law enforcement officer of a county society for the prevention of cruelty to animals, or other State or local law enforcement officer to enter onto the private property where a dog, domestic companion animal, or service animal is located and take custody of the animal.
>
> b. Notwithstanding the provisions of subsection a. of this section, or any other law, or any rule or regulation adopted pursuant thereto, to the contrary, any municipal humane law enforcement officer, humane law enforcement officer of a county society for the prevention of cruelty to animals, or other State or local law enforcement officer may immediately enter onto private property where a dog, domestic companion animal, or service animal is located and take custody of the animal if the officer has a reasonable basis to believe that, due to a violation of P.L.2017, c. 189 (C.4:22-17.1 et seq.), immediate assistance is required to protect or preserve

the animal's life or prevent injury to the animal.

A domestic companion animal is defined as "any animal commonly referred to as a pet[.]" N.J.S.A. 4:22-17.1.

N.J.S.A. 4:22-17.5(a)(1) provides for the proper shelter for a dog or other pet:

> a. Proper shelter for a dog, domestic companion animal, or service animal shall be a structure or other type of protection that meets, at a minimum, the following standards and requirements:
>
> (1) It provides at all times (a) adequate ventilation to allow the dog, domestic companion animal, or service animal to remain dry and maintain a normal body temperature, **(b) access to water in a sanitary and liquid state**, (c) exposure to natural or artificial light according to a regular cycle of day and night, (d) sufficient space so that the dog, domestic companion animal, or service animal can easily turn around in a full circle and lie down on the animal's side with limbs outstretched, and (e) when the animal is in a normal sitting position in the proper shelter, the top of the head of the animal cannot touch the ceiling of the proper shelter[.]
>
> [(emphasis added).]

The Legislature has deemed that a dog or other pet's lack of access to water can be the basis on which a law enforcement officer may enter private property without a warrant to provide "immediate assistance . . . to protect or preserve the animal's life or prevent injury to the animal." N.J.S.A. 4:22-17.7(b). When Berlin Police responded to defendant's home after receiving a call from defendant's mother about defendant's dog and two cats, those animals

had already been left unattended ever since defendant's arrest two nights earlier by a SWAT team. The officers did not know when defendant might be released (ultimately, defendant would not be released until more than a year later). (4T12-10 to 12). As defendant's dog and two cats had been without water—or food—for 33 hours and would remain without water or food indefinitely, the officers "had an objectively reasonable basis to believe that an emergency require[d] that [they] provide immediate assistance to protect or preserve life, or to prevent serious injury" to defendant's dog and cats. Edmonds, 211 N.J. at 132; see also N.J.S.A. 4:22-17.7(b) (permitting police to enter private property and take custody of an animal, without a warrant, when they have a reasonable basis to believe that, due to a violation, immediate assistance is required to protect or preserve the animal's life or prevent injury).

Further evincing the Legislature's desire to protect pets from harm, in 2023, the Legislature enacted N.J.S.A. 4:22-46.2,[3] a cognate of N.J.S.A. 4:22-17.7 that applies broadly to animal cruelty:

> a. Notwithstanding the provisions of any other law, or any rule or regulation adopted pursuant thereto, to the contrary, upon a showing of probable cause that there has been an animal cruelty violation, a court of competent jurisdiction may issue, upon request, a warrant to any municipal humane law enforcement officer, humane law enforcement officer of a county society for the prevention of cruelty to animals, or other State or local law enforcement officer to enter

[3] L.2023, c. 129, § 3, eff. July 26, 2023.

> onto the private property where an animal is located and take custody of the animal.
>
> b. Notwithstanding the provisions of subsection a. of this section, or any other law, or any rule or regulation adopted pursuant thereto, to the contrary, a municipal humane law enforcement officer, humane law enforcement officer of a county society for the prevention of cruelty to animals, or other State or local law enforcement officer may immediately enter onto private property where an animal is located and take custody of an animal if the officer has a reasonable basis to believe that, due to an animal cruelty violation, immediate assistance is required to protect or preserve the animal's life or prevent injury to the animal.

An animal cruelty violation is defined as "a civil or criminal violation of chapter 19 or 22 of Title 4 of the Revised Statutes, Title 2C of the New Jersey Statutes, or any other State law concerning animal cruelty." N.J.S.A. 4:22-46.1. One such violation is "[f]ail[ing], as the owner or as a person otherwise charged with the care of a living animal or creature, to provide the living animal or creature with necessary care." N.J.S.A. 4:22-17(a)(4) (criminal violation); see also N.J.S.A. 4:22-26(a)(4) (same) (civil violation).

The Legislature's desire to protect the welfare of animals is of long vintage, extending as far back as 1868, when it created the New Jersey Society for the Prevention of Cruelty to Animals and endowed it with police powers to enforce the animal-cruelty laws. Gerofsky v. Passaic Cnty. Soc. for Prevention of Cruelty to Animals, 376 N.J. Super. 405, 415 (App. Div. 2005). New Jersey's animal cruelty statutes in their present form were enacted in 1880. New Jersey

Soc. for Prevention of Cruelty to Animals v. Bd. of Ed. of City of E. Orange, 91 N.J. Super. 81, 84 (Co. 1966), aff'd sub nom., 49 N.J. 15 (1967). Ensuring the welfare of pets and other domestic animals is thus an important and long-standing governmental interest.

The practice in other state and federal jurisdictions reinforces that point and demonstrates its universality in our country. As Judge Joyce set forth in his ruling, many other state and federal courts have held that police may enter private property under the emergency-aid doctrine to protect the life or health of an animal. (1T59-16 to 61-3); see also State v. Archer, 259 So. 3d 999, 1003 n.2 (Fla. Dist. Ct. App. 2018) (collecting cases).

The first case Judge Joyce cited, Commonwealth v. Duncan, 7 N.E.3d 469, 471 (Mass. 2014), is particularly instructive because the court there articulated the rationale for applying the emergency-aid doctrine to animals. The case arose when police officers went to Duncan's home to serve a restraining order on her husband on January 2, 2011. The home was surrounded by a six-foot tall fence. Seeing dogs in the yard in apparent distress, the officers questioned Duncan, who said she was caring for them. The officers left only to return on January 8 after a neighbor called to report that there were two dead dogs and a third emaciated dog on Duncan's property. After confirming the neighbor's observations and receiving no answer at the door, the police removed the lock

from the fence and took custody of the dogs. Duncan, who was charged with three counts of animal cruelty, sought to suppress the evidence, contending that the emergency-aid doctrine did not apply to animals. Id. at 471-72.

The trial court referred that question of law to the Supreme Judicial Court of Massachusetts, which considered "whether the public interest underlying the emergency aid exception, in facilitating immediate first aid response to those in danger of harm or physical injury, applies with equal force to animals." Id. at 473. To discern the public interest, the court looked to statutory law in Massachusetts, which "focus[es] on the prevention of both intentional and neglectful animal cruelty." Ibid. The court concluded: "In light of the public policy in favor of minimizing animal suffering in a wide variety of contexts, permitting warrantless searches to protect nonhuman animal life fits coherently within the existing emergency aid exception to the warrant requirement, intended to facilitate official response to an immediate need for assistance for the protection of *life* or property[.]" Id. at 474 (emphasis in original; citations and internal quotation marks omitted). Elaborating on its reasoning, the court wrote:

> In addition to promoting life-saving measures, the ability to render such assistance vindicates the legislative framework for preventing cruelty to animals, particularly the provision regulating the conditions under which dogs may be kept outside. . . . Indeed, it would be illogical and inconsistent to permit the prosecution of dog owners for exposing their dogs to conditions that "could injure or

> kill [them]" in ill-equipped yards . . . only after the harm to animal life has taken place, while hindering the ability of police proactively to prevent such injury. Furthermore, the inclusion of animals within the ambit of the emergency aid exception enables trained personnel, such as police or animal control officers, to respond to animal emergencies, rather than lay people. In the absence of such trained professionals rendering care and assistance, untrained citizens may attempt to intervene, potentially causing further harm to the animal, to themselves, or to other members of the community, should an injured animal end up loose on public streets.
>
> [Ibid. (brackets in original; internal citations omitted).]

New Jersey law evinces the same solicitude for animal welfare. Not only do our statutes regulate the conditions under which dogs and other pets may be kept outside, see N.J.S.A. 4:22-17.2, but they also regulate the conditions under which dogs and other pets may be kept inside. See 4:22-17.5. Just as the officers in Duncan did not need to wait for the third dog to die before entering the yard, the police here did not need to wait for defendant's dog and two cats to starve to death before entering defendant's home, merely to collect the corpses. As can be seen on the recording from the body worn camera of Officer Mark Peiffer, who testified at the suppression hearing, and as Judge Joyce found, defendant's dog was in a cage, where both the food bowl and the water bowl were empty. Officer Peiffer put food into the food bowl while another officer put water into the water bowl. (Da24, 20:47-21:35; 1T48-4 to 6). The cats also lacked food and water. One cat was found in a closed bedroom while the other was in a litter box in a cat carrier in the basement. (1T49-8 to 50-16).

The court in Duncan also highlighted that the alternative to intervention by police or animal control could be civilian intervention, which would be fraught with risk. This serves as a rebuttal to that very suggestion by defendant at the suppression hearing, where defense counsel stated that defendant's mother should have been the one to enter the home through the window. (1T36-8 to 10; 1T38-4 to 9). Officer Peiffer's body worn camera captures his sergeant's conversation with defendant's mother in the driveway. See (Da24, 0:30 to 4:26). The suggestion that defendant's elderly mother could enter the home through a window is neither feasible nor wise.

Duncan cautions that where animal life is the basis for the emergency, justification for police entry will be stronger where the harm is caused by human abuse or neglect as opposed to being of natural origin. 7 N.E.3d at 475-76. Additionally, courts should consider "the species of the animal in need . . . the nature of the privacy interest at issue . . . whether any efforts were made to obtain the consent of the property owner prior to making entry onto the property . . . and the extent of the intrusion, including any damage done to the property." Id. at 476. Ultimately, however, "[t]he reasonableness of the search must be determined on a case-by-case basis upon consideration of the totality of the circumstances." Ibid.

Here, the police entered defendant's home at the behest of defendant's

mother after defendant was arrested by a SWAT team two nights earlier. The body-worn-camera recording shows the officers carefully entering the house through an unlocked front window. After seeing the dog in the crate in the living room and conducting a protective search of the home to ensure that there were no other occupants, the officers began looking for the cats. They did not open drawers or cupboards, but they looked behind a bed where they found one of the cats underneath the long-gun case behind the headboard. They found the second cat in a cat carrier in the basement. The officers thus limited their search to those areas where the cats were likely to be found. See Frankel, 179 N.J. at 599.

Contrary to defendant's contention, the emergency-aid doctrine does not require that animals suffer severe abuse or neglect before police can enter private property to provide assistance. See Duncan, 7 N.E.3d at 474. In People v. Thornton, 676 N.E.2d 1024 (Ill. App. Ct. 1997), police responded to an apartment complex for a report of a dog barking inside one of the apartments for two or three days. They spoke with the apartment manager, who told them that in response to complaints from residents, she attempted to contact Thornton without success. She entered Thornton's apartment, where she found a dog in a cage, the bottom of which was covered in urine and feces. There was no food or water in the cage, which was too small to permit the dog to stand, and the dog was thin and had blood on its paws. Based on this information, the officers

decided to enter the apartment, where they found the dog in the conditions described by the manager. Thornton was charged with one count of animal cruelty and was convicted following the denial of his motion to suppress evidence. Id. at 1026-27.

Upholding the police entry under both the emergency-aid doctrine and Illinois's animal cruelty statute, the court held that the officers acted reasonably, as they "did not know when, or if, [Thornton] might return to his apartment to tend to the distressed animal[,]" which the officers could reasonably have believed "was in need of immediate assistance to protect its life or prevent it from being seriously injured." Id. at 1028-29.

In City of Middletown v. Wagner, 325 A.3d 253 (Conn. App. Ct. 2024), the court upheld entry onto private property by animal control officers to seize dogs under the emergency-aid doctrine and Connecticut's animal cruelty statute. The case arose when Wagner was arrested on June 27, 2023, for domestic violence. Due to the squalid conditions of the home, the police contacted the health department, which deemed the residence unfit for human occupancy, requiring Wagner's girlfriend to vacate the home. When the girlfriend departed that evening, she told the police that there were three dogs in the barn behind the house, two of which were pregnant. She stated that she did not have a key and would not permit the officers to enter. The next day, with Wagner still in

custody, Animal Control officers tried to contact the girlfriend without success. Due to the hot weather, the lack of ventilation in the barn, and the fact that the dogs had not been cared for since the previous morning, the Animal Control officers returned to the home in the afternoon. With the assistance of the police, who broke the door frame of the barn, the Animal Control officers entered the barn, where they found five dogs, three of which were pregnant; the floor was covered in urine and feces. Three of the dogs had no food, and none of the dogs had water. Id. at 259-60.

Finding that the dogs "had not been cared for in approximately thirty-six hours and that the officers were concerned that the dogs' lives were potentially in danger on the basis of the weather, the lack of ventilation in the barn, and the dogs' access to water[,]" the court held that the Animal Control officers had reasonable cause to believe that the dogs "were in imminent harm and neglected, or cruelly treated." Id. at 265. Because "the officers reasonably concluded that the dogs were in imminent danger, the warrantless search did not violate [Wagner's] rights under the [F]ourth [A]mendment." Id. at 265-66.

Similarly, defendant's dog and two cats had been left unattended without food or water for thirty-three hours following her arrest when police entered her home to take custody of the animals. The dog was in a cage without food or water, as was the dog in Thornton. And as in Thornton and Wagner, the officers

did not know if or when defendant would return. The police were not required to wait until "after the harm to animal life has taken place" to enter defendant's home. Duncan, 7 N.E.3d at 474.

Defendant's contention that N.J.S.A. 4:22-17.7b does not support the police entry into her home because it lacks a probable-cause requirement misconceives the purpose of the statute, which is not to investigate crime but to protect animals from immediate harm under the community-caretaking and emergency-aid doctrines. Entry onto private property for law enforcement purposes is accomplished under subsection a. of the statute, which requires probable cause and the issuance of a summons to obtain a warrant. The purpose of the warrant is not to render assistance but to "take custody of the animal" based on the summons. N.J.S.A. 4:22-17.7(a).

Subsection b. expressly distinguishes itself from the law-enforcement-focused subsection a., as it begins, "Notwithstanding the provisions of subsection a. of this section, or any other law, or any rule or regulation adopted pursuant thereto, to the contrary . . . " N.J.S.A. 4:22-17.7(b). It then sets forth that police must have a "reasonable basis to believe that . . . immediate assistance is required to protect or preserve the animal's life or prevent injury to the animal." Ibid. This corresponds to the standard for the emergency-aid doctrine, which requires that a police officer have "an objectively reasonable basis to

believe that an emergency requires that he provide immediate assistance to protect or preserve life, or to prevent serious injury[.]" Edmonds, 211 N.J. at 132 (citation and internal quotation marks omitted).

State v. Hemenway, 239 N.J. 111 (2019), on which defendant relies, has no application to this case. The issue there was the standard of proof necessary to support the issuance of a search warrant under The Prevention of Domestic Violence Act. Id. at 116-17. The purpose of N.J.S.A. 4:22-17.7(b) is community caretaking, which is "totally divorced from the detection, investigation, or acquisition of evidence relating to the violation of a criminal statute." Cady, 413 U.S. at 441.

N.J.S.A. 4:22-17.7(b) and, as of 2023, N.J.S.A. 4:22-46.2(b) are codifications of the community-caretaking and emergency-aid doctrines as applied to animals. Those statutes and doctrines all require reasonableness, which is "the touchstone of the Fourth Amendment." State v. Gamble, 218 N.J. 412, 425 (2014) (citation and internal quotation marks omitted). The situation confronting the police when they responded to defendant's home was that her dog and two cats had been left unattended for thirty-three hours following defendant's arrest on aggravated assault and firearm charges, and those animals would remain unattended indefinitely. The officers acted reasonably in entering the home to protect the dog and cats from harm, and they carefully limited their

search to that purpose, as Judge Joyce found. (1T65-19 to 25). The discovery of the shotgun was incidental to that search because one of the cats was underneath it.

Because the police acted reasonably in entering defendant's home for the limited purpose of providing immediate assistance to the dog and cats, they lawfully seized the shotgun, which Judge Joyce properly held was admissible as evidence at trial.

POINT II

THE POLICE WOULD HAVE SOUGHT A SEARCH WARRANT, AND THEY ENGAGED IN NO MISCONDUCT.

Contending that the police obtained the search warrant only after discovering the starter pistols, defendant argues that their failure to obtain a search warrant following her arrest and their unjustified warrantless entry constituted flagrant misconduct. Only by ignoring the discovery of the shotgun and the facts of the aggravated assault and firearm offenses for which she was arrested can defendant claim that the inadvertent discovery of the starter pistols was the catalyst for the search warrant—the purpose of which was to find the handgun registered to defendant that was potentially implicated in the crimes with which she was charged. Because the discovery of the shotgun gave police probable cause to believe that defendant's handgun would also be found in the

home, Judge Joyce correctly held that the evidence obtained as a result of the search warrant was admissible under the independent-source doctrine.

An exception to the exclusionary rule, "[t]he independent source doctrine allows admission of evidence that has been discovered by means wholly independent of any constitutional violation." Nix v. Williams, 467 U.S. 431, 443 (1984). Where "the police would have obtained that evidence if no misconduct had taken place[,]" the independent-source doctrine seeks to balance the need for deterrence of police misconduct and the public interest "by putting the police in the same, not a worse, position that they would have been in if no police error or misconduct had occurred." Id. at 443-44.

New Jersey courts employ a three-part test to evaluate whether evidence is admissible under the independent-source doctrine:

> First, the State must demonstrate that probable cause existed to conduct the challenged search without the unlawfully obtained information. It must make that showing by relying on factors wholly independent from the knowledge, evidence, or other information acquired as a result of the prior illegal search. Second, the State must demonstrate in accordance with an elevated standard of proof, namely, by clear and convincing evidence, that the police would have sought a warrant without the tainted knowledge or evidence that they previously had acquired or viewed. Third, regardless of the strength of their proofs under the first and second prongs, prosecutors must demonstrate by the same enhanced standard that the initial impermissible search was not the product of flagrant police misconduct.
>
> [State v. Holland, 176 N.J. 344, 360–61 (2003).]

To meet this standard, "the State need only present facts or elements—proving each such fact or element by a preponderance of the evidence—that in combination clearly and convincingly establish the ultimate fact." State v. Smith, 212 N.J. 365, 395 (2012) (citation and internal quotation marks and text alterations omitted).

Defendant's contention that the police decided to apply for a search warrant only after the Animal Control officer discovered the starter pistols finds no support in the record. Officer Peiffer testified that he found the shotgun while searching for the cats. (1T8-11 to 16). Once the Animal Control officer arrived, the police officers directed her to the basement, where the second cat was located and where there was the tank with the four turtles. The Animal Control officer found the starter pistols when "she happened to open a drawer that the turtle tank was sitting on" to look for food, and she notified the officers. (1T10-18 to 25). "After we located the firearms, we got the rest of the animals out of the residence, and we were advised to exit the residence" to apply for a search warrant. (1T18-12 to 20).

There is no reason to believe that, but for the discovery of the starter pistols, the police would not have sought a search warrant, when the discovery of the shotgun provided an equal and independent basis to apply for one. The shotgun by itself gave police reason to believe that the handgun defendant used

to commit the aggravated assault and weapons offenses for which she was arrested would also be found in the home.

Defendant does nothing to advance her cause by relying on the facts of Holland, where the police searched the home after smelling marijuana from outside. 176 N.J. at 349. The subsequent search warrant relied almost entirely on the drug evidence that the police found inside the residence during their initial, unlawful search of the home following their arrest of Holland. Id. at 364. Here, the starter pistols are mentioned in only one of the twenty-two paragraphs comprising the factual basis for the search-warrant application. (Dca2-5). The purpose of the search warrant, as revealed in the officer's affidavit, was not to "'rediscover[,]'" Holland, 176 N.J. at 351, the firearms that the officers found while searching for the cats, but to search for the Smith and Wesson Shield 9mm handgun that was registered to defendant and that was "still outstanding and ha[d] not been located" following defendant's arrest for the aggravated assault and firearm offenses. (Dca5). "Based upon the discovery of the shotgun[] [and] the missing Smith and Wesson 9mm handgun," Judge Joyce appropriately found "by clear and convincing evidence the State would have applied for a search warrant to try and locate the Smith and Wesson 9mm handgun registered to the defendant, which may have been used in a crime." (2T19-15 to 20).

Thus, the recovery of the starter pistols effectively played no part in the

decision by police to obtain a search warrant for the unsecured handgun suspected of being used in the offenses for which defendant was arrested. The facts of the incident underlying defendant's arrest and the discovery of the shotgun supplied pre-existing probable cause that remained untainted by the unlawful discovery of the starter pistols for the independent-source doctrine to apply.

Even less convincing is defendant's allegation that the police engaged in flagrant misconduct by their initial entry of the home, i.e., aiding the animals was a ruse to search for the handgun. This ignores that the police went to defendant's home in response to the call from defendant's mother seeking aid for the animals. Once at the scene, the police spoke with defendant's mother and called the Camden County Prosecutor's Office before entering the home. (1T47-14 to 20). Upon entering the residence, the officers confined their search to locating the animals, as Judge Joyce found and as can be seen on Officer Peiffer's body-worn-camera recording. (1T65-19 to 25; Da24 beginning at 10:55). The police called Animal Control to care for the animals, and it was the Animal Control officer who discovered the starter pistols while looking for food for the turtles. (1T66-1 to 6).

"Flagrancy is a high bar, requiring active disregard of proper procedure, or overt attempts to undermine constitutional protections." State v. Camey, 239

N.J. 282, 310 (2019). The police acted in response to a call for service, they sought legal advice before entering the home, and the circumstances established an objectively reasonable basis to believe that their immediate assistance was required to protect the animals from harm, as Judge Joyce held. Perhaps realizing the manifest prudence of the actions by the police, defendant expressly declined to raise a claim of flagrant misconduct at the suppression hearing. (2T4-16 to 5-3). Quiescence is not the mark of flagrancy.

Because the State established by clear and convincing evidence that it intended to seek a search warrant irrespective of the discovery of the starter pistols, and that the police acted prudently in entering defendant's home to render immediate assistance to defendant's dog and cats, and as the discovery of the shotgun supplied probable cause to believe that defendant's registered handgun was also inside the home, Judge Joyce appropriately held that the evidence obtained as a result of the search warrant was admissible at trial under the independent-source doctrine.

POINT III

THE SENTENCING COURT PROPERLY FOUND AND WEIGHED THE AGGRAVATING AND MITIGATING FACTORS.

Defendant faults the sentencing court for not adequately explaining its findings of aggravating factors 3 (risk of re-offending) and 6 (criminal history),[4] and for not finding mitigating factor 7 (lack of prior criminal history or has led a law-abiding life)[5] despite defendant having only two final restraining orders entered against her. Those two final restraining orders, which were entered less than two months before defendant's aggravated assault, supported aggravating factor 6, as well as aggravating factor 3, which was also supported by the facts of the case. The final restraining orders also militated against a finding of mitigating factor 7, which defendant did not seek. Judge Joyce therefore appropriately exercised his discretion in imposing the five-year term of probation for which defendant bargained.

A defendant's sentence is reviewed for abuse of discretion. State v. R.Y., 242 N.J. 48, 73 (2020). When imposing sentence, the court "first must determine, pursuant to N.J.S.A. 2C:44-1(a) and (b), whether aggravating and mitigating factors apply." State v. Bieniek, 200 N.J. 601, 608 (2010). The court

[4] N.J.S.A. 2C:44-1(a)(3) and (6)
[5] N.J.S.A. 2C:44-1(b)(7)

then must "determine which factors are supported by a preponderance of the evidence, balance the relevant factors, and explain how it arrives at the appropriate sentence." State v. Amer, 471 N.J. Super. 331, 356 (App. Div. 2022) (quoting State v. O'Donnell, 117 N.J. 201, 215 (1989)), aff'd as modified, 254 N.J. 405 (2023).

The sentencing court need not expressly consider all the mitigating factors, even those brought to its attention by the defendant. Bieniek, 200 N.J. at 609; see also State v. Blackmon, 202 N.J. 283, 297 (2010) ("there is more discretion involved in identifying mitigating factors than in addressing aggravating factors"). For a mitigating factor to be found, it must be "amply based in the record before the sentencing judge[.]" State v. Dalziel, 182 N.J. 494, 504 (2005).

A defendant sentenced in accordance with his plea agreement faces a high hurdle when challenging the appropriateness of his sentence. "A sentence imposed pursuant to a plea agreement is presumed to be reasonable because a defendant voluntarily waived his right to a trial in return for the reduction or dismissal of certain charges, recommendations as to sentence and the like." State v. Fuentes, 217 N.J. 57, 70–71 (2014) (citation and internal quotation marks and text alterations omitted).

At defendant's sentencing hearing, the prosecutor made brief remarks,

after which defense counsel moved for sentencing. (4T3-19 to 5-25). Judge Joyce made the following findings concerning aggravating and mitigating factors:

> I have had the opportunity to review the adult pre-sentence report in this matter and find that [defendant] has had prior contact with the court system. She's had two family court convictions which resulted in the issuance of two final restraining orders.
>
> With this indictable conviction, the Court does find aggravating factor 3, risk defendant will commit another crimes; 6, the extent [of] the defendant's prior criminal record and the seriousness of the offense of which she has been convicted.
>
> And this is a serious offense. This has been amended to aggravated assault. . . . So [] I give great weight to both factors, 3 and 6 – there's the prospect defendant may commit another crime, based upon prior history and this incident, and this is a serious offense, although it's been negotiated, factual resolution with the Prosecutor's office.
>
> And I find factor 9, and I give great weight to that, the need for deterring the defendant from violating the law, the specific and general deterrence factors here. And I find that the deterrence factor here is significant because there was a – at least in the underlying charges in the matter, there was a weapon involved. And the weapon was ultimately pointed at somebody. It could have resulted in serious injury or death. Fortunately, it did not.
>
> I also find, in reviewing the 14 mitigating factors, that mitigating factor 10 is applied. And that is I do find defendant has not had the benefit of probationary treatment, and I think she will be particularly likely to respond affirmatively to that probationary treatment.
>
> Therefore, at this time, in weighing those aggravating factors on a qualitative, as well as quantitative basis, the Court's clearly convinced that the aggravating factors outweigh the mitigating factors.

[(4T10-6 to 11-21).]

This was a thoughtful explanation of the factors supported by the record. The presentence report reveals that the two final restraining orders against defendant were entered on November 30, 2022, less than two months before defendant assaulted Kyle Richardson on January 22, 2023. (PSR 5; 3T13-19 to 25). Defendant's aggravated assault thus was not aberrational conduct, but exhibited a propensity for aggressive confrontation that might exhibit itself again, especially considering how quickly the aggravated assault followed defendant's domestic-violence convictions. See State v. Rivera, 249 N.J. 285, 300 (2021) ("[T]he absence of a criminal record will not preclude application of aggravating factor three so long as it is supported by other credible evidence in the record.").

Those domestic-violence convictions likewise support aggravating factor 6, which, like aggravating factors 3 and 9 (need to deter),[6] addresses the potential for recidivism. See State v. Thomas, 188 N.J. 137, 153 (2006) (aggravating factors 3, 6, and 9 "involve determinations that go beyond the simple finding of a criminal history and include an evaluation and judgment about the individual in light of his or her history"). Defendant's two domestic-

[6] N.J.S.A. 2C:44-1(a)(9)

violence convictions less than two months before her commission of aggravated assault are a relevant part of her history that properly informed Judge Joyce's evaluation and judgment about the appropriate sentence to impose.

Nor can it be said that with two recent domestic-violence convictions defendant "led a law-abiding life for a substantial period of time before the commission of the present offense[.]" N.J.S.A. 2C:44-1(b)(7). Indeed, it was not said by defense counsel, who moved for sentencing without presenting argument. (4T5-20 to 25); see State v. Buckner, 437 N.J. Super. 8, 38 (App. Div. 2014) (holding that mitigating factor 7 did not apply where the defendant had incurred five municipal court convictions, multiple arrests, and a bench warrant in the ten years prior to his conviction).

Defendant obtained the benefit of her plea bargain, which allowed her to plead guilty to third-degree aggravated assault instead of any of the three second-degree crimes with which she was charged, all of which entailed a presumption of imprisonment, see N.J.S.A. 2C:44-1(d), and mandatory periods of parole ineligibility under either the No Early Release Act, N.J.S.A. 2C:43-7.2, or the Graves Act, N.J.S.A. 2C:43-6(c). (Da2-4). Despite finding that the aggravating factors outweighed the mitigating factor, Judge Joyce imposed the recommended sentence of time-served on condition of five years of probation. Because Judge Joyce's findings were supported by the record and resulted in the

outcome defendant sought, the sentence was an appropriate exercise of his discretion.

CONCLUSION

For the reasons expressed, the State urges this Court to affirm the judgment of the Law Division.

Respectfully submitted,

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DATED: March 25, 2025

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April 2, 2025

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REPLY LETTER-BRIEF ON BEHALF OF DEFENDANT-APPELLANT

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3765-23
INDICTMENT NO. 23-03-00867-I;

STATE OF NEW JERSEY,	:	CRIMINAL ACTION
Plaintiff-Respondent,	:	On Appeal from a Judgment of Conviction of the Superior Court
v.	:	of New Jersey, Law Division, Camden County.
AFI N. ROY A/K/A AFI ROY,	:	
Defendant-Appellant.	:	Sat Below:
	:	Hon. Michael E. Joyce, J.S.C.
		DEFENDANT IS NOT CONFINED

Your Honors:

This letter is submitted in lieu of a formal brief pursuant to R. 2:6-2(b).

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REPLY PROCEDURAL HISTORY AND STATEMENT OF FACTS

Defendant-appellant Afi N. Roy relies on the procedural history and statement of facts from her initial brief. (Db 3-8)[1]

[1] This brief uses the same abbreviations as Roy's initial brief. In addition, Db refers to Roy's initial brief, and Sb refers to the State's brief.

LEGAL ARGUMENT

Roy relies on the legal arguments from her initial brief, adding the following:

POINT I

ALL OF THE EVIDENCE DISCOVERED DURING THE WARRANTLESS SEARCH OF DEFENDANT'S HOME MUST BE SUPPRESSED BECAUSE NO WARRANT EXCEPTION NOR STATUTORY PROVISION PROVIDED A LAWFUL BASIS FOR POLICE TO ENTER THE HOME.

In her initial brief, Roy argued that the trial court erred in denying her motion to suppress all the physical evidence discovered in Roy's home, including the shotgun discovered, as a result of the unlawful, warrantless entry into her home. (Db 9-22) In response, the State argues that (1) the emergency-aid exception applies to animals; (2) statutory law authorized the entry into Roy's home; and (3) that the police here had an objectively reasonable basis to believe that immediate action was necessary to protect the animals inside Roy's home. (Sb 10-26) The State's arguments must be rejected because they are not supported by either the facts in this record or controlling case law.

First, the State argues that there is no reason for why the emergency-aid doctrine should not apply to animals. (Sb 13) This contention, however, does not take into consideration the repeated emphasis that New Jersey and federal

courts have placed on the fact "that a person's home is entitled to the highest form of protection against warrantless searches." State v. Wright, 221 N.J. 456, 460 (2015); see also State v. Radel, 249 N.J. 469, 476 (2022) (highlighting that "[o]ne of the most valued of all constitutional rights is the right to be free from unreasonable searches of one's home"). The New Jersey Supreme Court's insistence on protecting citizens from governmental intrusion into the home is evident in its decision in State v. Vargas, 213 N.J. 301 (2013). There the Court limited the community-caretaking doctrine as applied to homes, holding that it is not a stand-alone exception to the warrant requirement for entry into a home. Vargas, 213 N.J. at 321. The Court stated that "merely because police activities are divorced from the detection, investigation, or acquisition of evidence relating to the violation of a criminal statute, does not mean that persons have a lesser expectation of privacy in their homes." Id. at 325-26 (internal citations and quotations omitted). Instead, when police are engaging in a community-caretaking role and want to enter the home without consent, they may do so under the emergency-aid exception so long as the standard – an objectively reasonable basis to believe that an emergency requires immediate assistant to protect life or prevent injury – is satisfied. Id. at 323-24.

As emphasized in Roy's initial brief, New Jersey jurisprudence has not expanded the emergency-aid exception to animals – instead, case law involving

the exception has consistently focused on threat to human life. See Vargas, 213 N.J. 327-28 (involving a rental tenant who had not been seen for weeks); State v. Fede, 237 N.J. 138, 146-47 (2019) (involving reports of domestic violence); State v. Garland, 270 N.J. Super. 31, 44-45 (App. Div. 1994) (involving reports that children are left unattended). This Court should not expand the emergency-aid doctrine to apply to animals in this case both because of the heightened protection of citizens' homes in New Jersey and because such an expansion is not supported by New Jersey case law.

Next, the State asserts that N.J.S.A. 4:22-17.7(b) essentially codifies the expansion of the emergency-aid doctrine to animals and thus additionally relies upon it to justify the search.[2] (Sb 25) Roy agrees that N.J.S.A. 4:22-17.7(b) is the Legislature's attempt to expand the emergency-aid doctrine to animals, but the Legislature may not lessen the protections provided by New Jersey's Constitution. All statutes must abide by "well-established constitutional norms," and the extension of the emergency-aid doctrine to animals under the Fourth Amendment is far from "well-established." State v. Hemenway, 239 N.J. 111,

[2] The State also cites to N.J.S.A. 4:22-46.2 to support this contention and other arguments in its brief, (Sb 25), however this statute was not relied upon in the trial court and the State acknowledges that it was enacted and took effect on July 26, 2023, several months after the warrantless entry into Roy's home which occurred on January 24, 2023, (1T 6-10 to 7-4). See L. 2023, c. 129 (providing that the provisions enacted under the Act including N.J.S.A. 4:22-46.2 are to be effective on July 26, 2023). Thus, this statute is not applicable to this case.

116-17, 127 (2019) ("[a]ll statutes must conform to [the] fundamental constitutional principle" that under both the Federal and State Constitutions "entry into the home must be premised on a search warrant issued on probable cause or on an exception to the warrant requirement, such as consent or exigent circumstances."). New Jersey courts have not contemplated the expansion of the emergency-aid exception to animals, which would allow greater warrantless access into the home, one of the most protected areas provided by the constitution. Thus, any reliance on N.J.S.A. 4:22-17.7(b) as the lawful basis to enter a home without a warrant must be rejected, even if important societal interests are at stake, because it defies the protections afforded to the home by the constitution and thus cannot be statutorily authorized. See Hemenway, 239 N.J. at 117 (holding that though "[c]ombatting domestic violence is an important societal and legislative goal . . . the beneficent goal of protecting domestic violence victims must be accomplished while abiding by well-established constitutional norms").

Lastly, the State argues that there was no need for a search warrant because there was an objectively reasonable basis to enter the home under both N.J.S.A. 4:22-17.7(b) and the emergency-aid exception. (Sb 10-11, 24-26) The State acknowledges that warrantless entry into a home based on the emergency-aid exception requires that there are "immediate," "urgent," "fast-breaking," and

"potentially life-threatening" circumstances that reasonably would require "prompt action" from law enforcement. (Sb 12) But the record here does not support that there were any immediate or urgent circumstances that required law enforcement to act promptly to protect the animals inside the home.

The State argues that the officers had an objectively reasonable basis to believe there was an emergency that required immediate assistance in Roy's home because the animals were left in Roy's home following her arrest and they were without food or water during that time and potentially indefinitely. (Sb 14-15) Nothing in the record supports the assertion that the animals were without food or water the entire time they were left alone – the only information the officers had prior to entering the home was a report from Roy's mother that she was "worried about animals that had been in the house for several days with no one to care for them." (1T 6-21 to 7-4, 47-4 to 6) But the State agrees that the mother did not have a key to the house. (Sb 5) Therefore, there was no way for Roy's mother to know whether the animals had food or water, or whether someone else came to the home to care for them. The officers certainly did not make any efforts to obtain this information either.

Furthermore, the State's discussion of facts discovered after law enforcement already entered the home, (Sb 19, 23-24), is not relevant to the determination of whether there was an objectively reasonable basis that an

emergency existed to support entry into the home. Only the circumstances known to the officers prior to entering are relevant to the analysis. See State v. Hathaway, 222 N.J. 453, 469 (2015) (discussing the emergency-aid doctrine and emphasizing that "[w]hen viewing the circumstances of each case, a court must avoid the distorted prism of hindsight . . . . A court must examine the conduct of those officials in light of what was reasonable under the . . . circumstances that were faced at the time." (internal quotations and citations omitted)). At the time of the warrantless entry, the officers only knew that the animals had at most, been alone for 33 hours, and that Roy's mother could not enter the home. (1T 9-3 to 12, 19-24 to 20-25, 46-8 to 23, 62-17 to 20) The officers did not know until they actually entered the home, that the dog and cats did not have food or water – such information cannot be relied upon to justify entry into the home.

The State's discussion of jurisdictions that have extended the emergency-aid doctrine to animals provides even further support that, here, there was no objectively reasonable basis to believe there was an emergency to justify the immediate entry into Roy's home. (Sb 17-24) For instance, in Thornton, the apartment manager informed police that she entered the defendant's apartment after complaints from tenants of a dog barking and discovered a dog stuck in a small crate covered in urine and feces, with no food or water and appearing thin with blood on its paws. People v. Thornton, 676 N.E.2d 1024, 1026 (Ill. App.

Ct. 1997). The apartment manager attempted to contact the defendant prior to entering the apartment multiple times. Ibid. The police then spoke with a tenant who lived above the defendant's apartment who corroborated that the dog had been barking continuously for several days. Ibid. Based on all of this very detailed information gathered, the police decided to enter the apartment without a warrant to check on the dog's well-being. Id. at 1027. The Illinois appellate court upheld this warrantless entry under the emergency-aid exception based on the "totality of the circumstances" presented. Id. at 1028-29.

In Wagner, following the defendant's arrest, the health department determined that the defendant's home was unfit for human occupancy. City of Middletown v. Wagner, 325 A.3d 253, 259 (Conn. App. Ct. 2024). Upon vacating the home as a result, the defendant's girlfriend told the police that there were three dogs in the barn behind the home, two of which were pregnant, but refused to give police access to the barn. Ibid. The day after the girlfriend vacated, Animal Control tried to contact her again but received no response. Id. at 260. After it became "hot and humid with temperatures in the mid-eighties," police decided to enter the barn to tend to the dogs inside. Ibid. The Connecticut appellate court determined that based on these circumstances, the officers had a reasonable basis to believe that the animals were imminent harm, thereby justifying their warrantless entry into the barn. Id. at 265-66.

The circumstances presented to the Illinois and Connecticut appellate courts are extremely different than the information the police relied upon in Roy's case. As to the well-being of the animals, the officers only knew that the animals were inside the home, at most, for 33 hours. (1T 19-24 to 20-25, 46-8 to 23, 62-17 to 20) Nothing in the record suggests that the officers attempted to contact anyone else who may have had access to the home, or had any information regarding what state the animals were left in, or whether the animals truly did not have access to food or water. The circumstances presented here are extremely distinguishable from any of the cases the State cited.

Further, because N.J.S.A. 4:22-17.7(b) provides a similar standard as the emergency-aid exception, any reliance on the statute to justify the officers' entry into Roy's home is misplaced. In addition, contrary to the State's assertion, a pet's lack of access to water cannot be the sole basis that officers can rely upon to enter a home to provide immediate aid because a lack of continuous access to water is not a strict liability offense. N.J.S.A. 4:22-17.5(a)(1) does indeed state that proper shelter for a pet requires "access to water in a sanitary and liquid state." But, N.J.S.A. 4:22-17.4(b)(3) states that notwithstanding N.J.S.A. 4:22-17.5(a)(1) "with regard to access to water, a person may confine a dog, domestic companion animal . . . without providing access to water at all times if the animal is confined indoors and in the primary living space of the residence of the

owner." Here, the animals were confined in Roy's home, therefore the statute does not require that the animals have access to water at all times. (1T 6-21 to 7-4, 47-4 to 6) There is also no indication in the record that the officers knew prior to entry that the animals inside were without access to water or food for the entire 33 hours they may have been left unattended. Thus, statutory law does not support the principle that lack of access to water can be the sole basis to enter a home without a warrant.

Importantly, Roy is not arguing that animals must suffer severe abuse or neglect or that officers must wait until animals die to enter the home on the basis of the emergency-aid exception or N.JS.A. 4:22-17.7(b). Rather, where no real emergency exists that requires immediate action to protect animals, such as here, Roy argues that officers should attempt to lawfully gain entry into the home through proper procedure, such as applying for a warrant under N.J.S.A. 4:22-17.7(a).

Therefore, this Court should reject the State's arguments, reverse the trial court's decision to deny suppression as to the shotgun discovered during the warrantless search, and remand to provide Roy the opportunity to withdraw her plea if she chooses to do so.

POINT II

THE FRUITS OF THE WARRANTED SEARCH ALSO MUST BE SUPPRESSED BECAUSE THE STATE CANNOT MEET ITS BURDEN IN PROVING BY CLEAR AND CONVINCING EVIDENCE ALL THREE OF THE HOLLAND PRONGS.

In her initial brief, Roy argued that the independent source doctrine cannot be applied to the subsequent search of her home that was conducted pursuant to a search warrant. (Db 23) This is true even if this Court affirms the trial court's decision to deny suppression as to the shotgun discovered because the discovery of the pistols is what ultimately led police to apply for a search warrant. Importantly though, if this Court agrees with Roy that the shotgun should be suppressed as well, then, as outlined in Roy's initial brief, this lends even further support that the subsequent search pursuant to a warrant cannot be disentangled from the first, illegal search. (Db 28-29) The warrant application included extensive details regarding the illegally conducted search, including both the discovery of the shotgun and the starter pistols. (2T 10-19 to 11-19; Dca 3-6) Such reliance on the illegally conducted search in the warrant application proves that the police would not have sought a search warrant but for the illegally discovered evidence. The State even argues throughout its brief that the shotgun specifically provided the independent basis to apply for a warrant. (Sb 26-28) Thus, if the shotgun is indeed suppressed, then the State cannot prove by clear

and convincing evidence that the officers would have sought a warrant without the knowledge of the tainted evidence from the illegal, warrantless search.

Furthermore, Holland establishes that the State has the burden to prove all three of the Holland prongs by clear and convincing evidence in order for the independent source doctrine to apply. State v. Holland, 176 N.J. 344, 360-61, 365 (2003). The State's contention that Roy expressly declined to raise a claim of flagrant misconduct at the suppression hearing is first inaccurate and also not required. Defense counsel at the suppression hearing chose to focus her argument on the second prong of Holland – she did not expressly decline to rely on the third prong. (2T 4-25 to 5-3) Further, any suggestion that the choice to focus on the second Holland prong conveys agreement that the State met its burden as to the third prong is incorrect because the State always has the burden to prove all three prongs of the Holland test. 176 N.J. at 360-61, 365. In other words, it is the State's burden to prove that the warrantless search was not the product of flagrant police conduct; Roy does not have the affirmative obligation or responsibility to establish flagrancy. Nevertheless, Roy's initial brief outlines the flagrancy of the police's misconduct in detail, emphasizing that police chose to actively disregard proper procedure and instead of applying for a warrant within the 33 hours following Roy's arrest, the police chose to use perfectly safe animals as an excuse to avoid constitutionally protected procedures. (Db 31-32)

The State fails to satisfy its burden under the Holland framework, and thus the independent source doctrine cannot apply to the subsequent search of Roy's home pursuant to a search warrant whether or not this Court agrees with Roy regarding the lawfulness of the initial warrantless search. As a result, all evidence discovered in Roy's home must be suppressed, and the matter must be remanded to provide Roy the opportunity to withdraw her plea if she chooses to do so.

POINT III

THE SENTENCING COURT FAILED TO ADEQUATELY CONSIDER DEFENDANT'S LACK OF CRIMINAL HISTORY WHEN IMPOSING DEFENDANT'S SENTENCE.

To support Roy's sentence, the State solely relies upon Roy's past involvement in family part proceedings. (Sb 32-37) However, the State fails to acknowledge Roy's complete lack of criminal history and that she was a first-time offender at sentencing. Thus, for the reasons outlined in Roy's initial brief, the court improperly found and weighed aggravating factors 3 (likelihood of reoffending) and 6 (prior criminal record and seriousness of present offense), N.J.S.A. 2C:44-1(a)(3), (6), and should have found mitigating factor 7 (no history of prior criminal activity), N.J.S.A. 2C:44-1(b)(7), because it was supported by competent, credible evidence in the record, State v. Case, 220 N.J.

49, 64 (2014). (Db 33-36) Thus, this Court should remand this case for resentencing.

CONCLUSION

For these reasons, the evidence seized during the searches of Ms. Roy's home must be suppressed. Ms. Roy respectfully requests that the matter be remanded to the trial court to provide her with an opportunity to withdraw her plea if she chooses to do so. Alternatively, the matter should be remanded for resentencing.

Respectfully submitted,

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